

**ELECTRONICALLY FILED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Title	:	Large-Scale, Fault-Tolerant Audio Conferencing In a Purely Packet-Switched Network			
Inventors	:	Warren E. Baxley et al.			
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**REPLY BRIEF**

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**I. STATUS OF CLAIMS**

Claims 1-2, 11 and 16-31 are cancelled. Claims 3-5, 7-10, 12-15 and 40 are rejected.  
Claims 6 and 32-39 are withdrawn. Claims 3-5, 7-10, 12-15 and 40 are appealed.

## **II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claim 40 stands rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,937,597 to Rosenberg et al. ("Rosenberg"). Final Office Action dated 7 July 2010 at pp. 4-6.

Claims 3, 7 and 12 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,995,608 to Detample Jr. et al. ("Detample") in view of Rosenberg. Final Office Action dated 7 July 2010 at pp. 7-11.

Claims 4-5 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Detample in view of Rosenberg further in view of U.S. Patent No. 6,421,339 to Thomas ("Thomas"). Final Office Action dated 7 July 2010 at pp. 11-12.

Claims 8-10 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Detample in view of Rosenberg further in view of U.S. Patent No. 5,978,463 to Jurkevics et al. ("Jurkevics"). Final Office Action dated 7 July 2010 at pp. 12-13.

Claims 13-15 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Detample in view of Rosenberg further in view of U.S. Patent No. 5,680,392 to Semaan ("Semaan"). Final Office Action dated 7 July 2010 at pp. 13-16.

### III. ARGUMENT

#### A. Reply to Examiner's Answer Relative to Independent Claim 40

For the Board's convenience, Appellants will respond to Examiner's Response to Arguments relative to the numbered bullet points in the Examiner's Answer (reproduced here):

- i. "...Rosenberg's proxy server simply cannot be equated with a multipoint control unit...Rosenberg's proxy server does not perform functions equivalent to the claimed multipoint control unit" (see page 10, last ¶ of Brief);
- ii. "...claim 40 clearly recites "an already active audio conference" and "adding an additional endpoint to the audio conference"...Clearly, an already active audio conference has at least two participants and adding an additional participant certainly makes at least three" (see page 11, 2nd ¶ of Brief);
- iii. "...the management or preparation of calls is wholly different from managing an audio conference between three or more participants..." (see page 11, 3<sup>rd</sup> ¶ of Brief);
- iv. "...it is illogical for the Examiner to rely heavily on Figures 3-4 and its corresponding description because this portion of Rosenberg is in no way directed to an audio conference..." (see page 11, last ¶ to page 12, 1<sup>st</sup> ¶ of Brief);
- v. "...Examiner makes clear that his rejection cannot be sustained because the "new" invite request simply does not denote another call..." (see page 12, 2nd ¶ of Brief);  
and
- vi. "...Rosenberg does not disclose anything arranged as in independent claim 40 nor does Rosenberg disclose the identical invention in complete detail as required by law and USPTO examining guidelines" (see page 13, last ¶ of Brief).

Examiner's Answer dated 25 April 2011 at pp. 17-18.

Comments Regarding Examiner's Response to argument (i) (claim 40)

In Response to Appellant's previous arguments (i), the Examiner asserts the Examiner has abided by M.P.E.P. 2112.02 in the anticipation-based rejection of claim 40. Specifically, the Examiner asserts:

The functions being relied upon in the argument pertains to the functions performed by the multipoint control unit (MCU). The functions include: (a) "managing the audio conference" and (b) "placing and outbound point to point call."

In the rejections, the Examiner has relied upon the proxy server of Rosenberg to show the multipoint control unit since the proxy server of Rosenberg performs the functions of (a) "managing the audio conference" and (b) "placing and outbound point to point call."

Examiner's Answer dated 25 April 2011 at p. 18.

It appears to Appellants that the Examiner is misinterpreting M.P.E.P. 2112.02 because the Examiner asserts an opposite rationale than what is intended by that section. M.P.E.P. 2112.02 states if the devices are the *same* then "it can be assumed the device will inherently perform the claimed process." In contrast, the Examiner is improperly asserting that if the devices carry out the same functions<sup>1</sup> then they must be the same device. Using the Examiner's reasoning it would follow that because a calculator can perform addition and a supercomputer can perform addition a calculator can disclose a supercomputer. Clearly this example illustrates the Examiner has misapplied the concepts of M.P.E.P. 2112.02. Furthermore, because anyone of skill in the art would understand that an MCU is not the same device as a proxy server,<sup>2</sup> it is improper for the Examiner to rely on M.P.E.P. 2112.02 to assert the claimed MCU is disclosed by Rosenberg's proxy server.

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<sup>1</sup> Appellant disagrees that Rosenberg's "proxy server" carries out the claimed functions as asserted by the Examiner as was explained in Appellant's Appeal Brief and further discussed below.

<sup>2</sup> A simple lookup for respective definitions shows: "(Multipoint Control Unit A device that is used to moderate a videoconference of three or more end points, an end point being one or more users in a single location;" and "In computer networks, a **proxy server** is a server (a computer system or an application) that acts as an intermediary for requests from clients seeking resources from other servers." See <http://encyclopedia2.thefreedictionary.com/Multipoint+Control+Unit> and [http://en.wikipedia.org/wiki/Proxy\\_server](http://en.wikipedia.org/wiki/Proxy_server) respectively.

Next, the Examiner incorrectly asserts that because Rosenberg's proxy server understands a portion of the Session Initiation Protocol (SIP) it therefore follows that Rosenberg's proxy server "manages calls." However, the Examiner's position is fundamentally flawed because the Examiner cites to and relies upon portions of Rosenberg disclosing the capabilities of the session initiation protocol (SIP) itself. Appellants do not contest that SIP can manage or prepare for calls. Appellants submit that Rosenberg's proxy server is clearly disclosed to manage INVITE requests and to work with a "location server" to forward requests to the current location of the callee. See Rosenberg Figure 3 and corresponding text at Col. 5 ln. 55 to Col. 6 ln 3. Even though SIP can be used to manage or prepare for calls, this is not the issue because the claim requires "manage the audio conference," not just "manage a call" as being asserted by the Examiner. Rosenberg *does not* disclose that his "proxy server" performs the same functions of an MCU or the particular functions recited in independent claim 40 because Rosenberg's proxy server simply does not<sup>3</sup> "manage the audio conference" or "place an outbound point to point call to the additional endpoint [being added to an already active audio conference]." Managing a call, as done in SIP, and managing the audio conference, as specified in the claim, are not equivalent and the Examiner has not shown anything to prove the equivalence. The Examiner is simply not providing any meaning to "audio conference," which is improper.

The Examiner's Answer argues the SIP invitations are used to add third parties in a conference. While that may be true of the SIP protocol, the Examiner has not cited anywhere in Rosenberg that such conference call capabilities of the SIP protocol are being used by the proxy server of Rosenberg.

The Examiner also wishes to "emphasize the use of a new INVITE request as issued by proxy server. Having a "new" INVITE request denotes another or a new call being place by proxy server." Examiner's Answer dated 25 April 2011 at pp. 20-21 (emphasis in original). However, the "new" part of the INVITE request is because the proxy server is *forwarding* the request and (as explained by the Examiner) "the call identifier in the CALL-ID header field is the same, in order to maintain an association with the original request..." Examiner's Answer dated

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<sup>3</sup> For further discussion of these points please see Appeal Brief at pp. 10-13.

25 April 2011 at pp. 20 (emphasis in original). Clearly, based on the Examiner's own explanation that the CALL-ID header field is the same it follows that this *cannot* be "another or a new call being placed by proxy server." Examiner's Answer dated 25 April 2011 at pp. 20-21. Simply put, the Examiner's explanation supports Appellant's contention that Rosenberg's proxy server *does not* place an outbound call because the call has already been placed and Rosenberg's proxy server is simply forwarding an already placed call request.

Comments Regarding Examiner's Response to argument (ii) (claim 40)

In Response to Appellant's previous arguments (ii), the Examiner asserts Appellants have relied on features not claimed. The Examiner supports his position by asserting "One of ordinary skill in the art may establish an audio conference and wait for conferees to join. Thus, at least an audio conference does not require 'at least two participants.'" Examiner's Answer dated 25 April 2011 at p. 20. In rebuttal, Appellants submit that a single person in an audio conference, waiting for a second conferee to join, is not in an *already active* audio conference.

Furthermore, Appellants are not intending to read limitations from the Specification into the claims. Appellants pointed out this distinction because the "Examiner relied heavily on [Rosenberg] Figures 3-4 and its corresponding description in col. 6." Advisory Action dated 28 September 2010 at p. 4. As explained clearly in Appellant's Appeal Brief at pp. 11-12, it is illogical for the Examiner to rely heavily on this portion of Rosenberg because it is unmistakably directed to an embodiment of two-party calling and in no way directed to a conference call as recited in independent claim 40. Therefore, Rosenberg's Figs. 3-4 and corresponding text cannot reasonably or legally be relied upon to support the asserted anticipation rejection. As the Board is aware, an identical invention must be shown in as complete detail as stated in the claim to support a *prima facie* case of anticipation. Simply put, the instant rejection is flawed at least for mixing two distinct embodiments from Rosenberg in an attempt to formulate an anticipation rejection. For at least this reason alone, the rejection of independent claim 40 should be reversed.



Comments Regarding Examiner's Response to argument (iii) (claim 40)

In Response to Appellant's previous arguments (iii), the Examiner asserts that Appellant's arguments "amount to a general allegation that claims define a patentable invention without specifically point out how the language of the claims patentably distinguishes them from the references." Examiner's Answer dated 25 April 2011 at p. 22. In reply, Appellants state that claims are clearly directed to a "multi point control unit managing the audio conference." Because of inherent properties of a multi point control unit, as would be understood to one of ordinary skill in the art, it would be clear that Rosenberg's proxy server (which is involved with call initiation) cannot be equated with an MCU managing a conference. Additionally, Appellants have clearly distinguished the language of the claims and are not making "a general allegation" as asserted by the Examiner. Appellants are simply trying to simplify the information in an attempt to explain distinctions of the claimed subject matter relative to an assertion that is unsupported and unreasonable (*i.e.*, proxy server equates to MCU). The Examiner, as stated above, simply ignores all context regarding "manage an audio conference" and any knowledge of one skilled in the art by equating managing a call to be the same as managing a conference to make the rejection. Appellants are simply reminding of the duty to view the claims in view of one skilled in the art and in view of the Specification, which the Examiner has not done.

Comments Regarding Examiner's Response to argument (iv) (claim 40)

In Response to Appellant's previous arguments (iv), the Examiner reiterates points already discussed. For brevity, Appellants do not re-iterate in their entirety previous points (see above) but merely states that relying on two-party calling in Rosenberg (*i.e.*, Figs. 3-4) to present an anticipation rejection of conference calling as recited in independent claim 40 is improper on its face. Also, even though Rosenberg explains functions of SIP, not all the functions of SIP are performed by Rosenberg's proxy server as asserted by the Examiner.

Furthermore, the Examiner appears to admonish Appellants by stating:

However, this misunderstanding could have been easily avoided if Applicant has abided by MPEP 2141.02 stating "A prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention."

Examiner's Answer dated 25 April 2011 at p. 24.

In reply, Appellants note the Examiner is admonishing Appellants for not abiding by M.P.E.P. 2141.02 when addressing an *anticipation* rejection (*i.e.*, 35 U.S.C. 102). Appellants then point out that M.P.E.P. 2141.02 is a subsection of M.P.E.P. 2141 which pertains to "Examination Guidelines for Determining *Obviousness* Under 35 U.S.C. 103." Accordingly, M.P.E.P. 2141.02 should not be considered at all when determining propriety of the current rejection. This is yet further proof that the Examiner has failed to present a legitimate *prima facie* case of *anticipation* as required by law and USPTO examination guidelines. Therefore, Appellants respectfully request the Board reverse this rejection.

Comments Regarding Examiner's Response to argument (v) (claim 40)

In Response to Appellant's previous arguments (v), the Examiner again cites to a portion of Rosenberg relied upon in point (i) discussed above. Simply put, the fact that Rosenberg's proxy server merely *forwards* an already placed call with a "new" invite request (note particularly the new invite request has the *same* call identifier) does not disclose that Rosenberg's proxy server places an outbound call to an addition endpoint as required by independent claim 40. For this reason and other reasons stated above, Appellants respectfully request the board reverse the rejection of independent claim 40.

Comments Regarding Examiner's Response to argument (vi) (claim 40)

In Response to Appellant's previous arguments (vi), the Examiner merely asserts that the M.P.E.P Examination guidelines have been followed. However, as clearly shown above they have not been followed properly. Furthermore, no embodiment disclosed in Rosenberg discloses "the identical invention in as complete detail" as is required to sustain an anticipation rejection. As a result, Rosenberg cannot support a legitimate *prima facie* case of anticipation. Therefore, Appellants respectfully request the Board reverse the rejection of independent claim 40.

**B. Reply to Examiner's Answer Relative to Independent Claim 7**

For the Board's convenience, Appellants will respond to Examiner's Response to Arguments relative to the numbered bullet points in the Examiner's Answer (reproduced here):

- i. "...Rosenberg in no way discloses initiating an outbound call request from a multipoint control unit which is also managing the audio conference. ...Rosenberg's proxy server cannot be equated with a multipoint control unit..." (page 15, 1st ¶);
- ii. "...Because bridge (M) learns B's address from B directly, the example does not meet the requirement that the address is obtained "from a packet-switched conferencing system component" (see page 16, 3rd ¶) and
- iii. "...any combination of the example multiple party bridge operation with the normal call procedure involving address lookup (e.g. Rosenberg's location server" is improper because such combination would destroy the operation of each case." (page 16, 3rd ¶).

Examiner's Answer dated 25 April 2011 at p. 26

Comments Regarding Examiner's Response to argument (i) (claim 7)

In Response to Appellant's previous arguments (i), the Examiner merely asserts the same arguments relating to claim 40. Appellants therefore rely on comments supplied above.

Comments Regarding Examiner's Response to argument (ii) (claim 7)

In Response to Appellant's previous arguments (ii), the Examiner again relies on Rosenberg's proxy server to disclose the claimed multipoint control unit. Appellants submit that for at least the reasons stated above (with respect to claim 40) the Examiner's reliance on Rosenberg's proxy server is without merit.

Comments Regarding Examiner's Response to argument (iii) (claim 7)

In Response to Appellant's previous arguments (iii), the Examiner responds to an argument that Appellants simply did not make in the Appeal Brief. Appellant's current Appeal Brief does not make an argument that there is no teaching, suggestion or motivation to combine references so Appellants cannot comment on the Examiner's Response. Appellants rely on arguments from Appeal Brief (p. 16) regarding improper combinations that destroy the operation of cited references.

Appellants do note however that the Examiner concludes his Response by stating:

Thus, given the current rejections and having the additional reasoning presented above with respect to **arguments (i) to (iii)**, the Examiner has relied upon the USPTO examining guidelines as presented in MPEP and in this instance, Rosenberg anticipates the claimed invention as presented in claim 7.

Examiner's Answer dated 25 April 2011 at p. 28.

As shown in the above excerpt, the Examiner again states that USPTO guidelines were followed and Rosenberg "*anticipates* the claimed invention as presented in claim 7." However, the rejection of claim 7 is an obviousness rejection under 35 U.S.C. 103. While this instance may be simple typo on the part of the Examiner, given what was discussed above regarding the improper 102 anticipation rejection, it is not clear to Appellants that proper Examination guidelines were in fact followed by the Examiner.

Appellants submit that Rosenberg's proxy server and its disclosed functions do not disclose the claimed multipoint control unit or its functionality as recited in independent claim 7. Accordingly, Appellants respectfully request the Board reverse the rejection of independent claim 7 and all claims depending there from.

### **C. Conclusion**

For at least the reasons stated above, Appellants respectfully submit that all outstanding rejections should be reversed. To the extent specific claims have not been addressed, these claims depend from one or more claims that are specifically addressed, and are therefore patentable for at least the same reasons as the claims specifically addressed. Appellants further believe that it has complied with each requirement for a Reply brief.

In the course of the foregoing discussions, Appellants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that other limitations may be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there

may be other distinctions between the claims and the cited prior art which have yet to be raised, but which may be raised in the future.

If any fees are required or have been overpaid, please appropriately charge or credit those fees to Deposit Account Number 501922/199-0248US-C.

Respectfully submitted,

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